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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

November 1, 1995

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

Re: In the Matter of Toll Free Service Access
Codes, CC Docket No. 95-155

Dear Mr. Caton:

Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, enclosed please find an original and 9 copies of the Comments of the 800 Users Coalition filed in the above captioned matter. Please date stamp the additional copy and return it with our messenger.

If you have any questions regarding this filing, please do not hesitate to call.

Sincerely,

Colleen Boothby
Colleen Boothby

Enclosures

BEFORE THE
FEDERAL COMMUNICATION COMMISSION
Washington, D.C. 20554

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In the Matter of
Toll Free Service Access Codes

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CC Docket No. 95-155

COMMENTS OF THE 800 USERS COALITION

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November 1, 1995

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SUMMARY

The 800 Users Coalition ("Coalition"), a group of large 800 service customers that includes leading banks, the securities industry, entrepreneurs, credit card issuers, airlines, hotels, manufacturing companies and technology companies, rely on the integrity and efficiency of the toll free system. Coalition members generate billions of dollars in revenues and minutes of traffic over 800 numbers. The roll-out of new Service Access Codes ("SACs") can either expand the use, and protect the viability, of the toll free system or severely impair it. The Coalition urges the Commission to enact rules which accomplish the former.

The viability of the toll free system depends of the protection of "sensitive" 800 numbers -- 800 numbers (usually widely disseminated) are crucial to the operation of the holder's business. Some "sensitive" numbers are used for widely-publicized marketing and high volume call center functions (e.g., reservation services for hotels and airlines, and product orders). In other cases the mnemonic equivalent of these numbers have become synonymous with the company (e.g., 1-800 THE-CARD) or are a tool around which an entire business is built (e.g., 1-800-FLOWERS). Regardless of their function, these numbers must be protected.

The Coalition supports the protection of sensitive numbers through several mechanisms: First, the Commission should separate SACs by service applications, *i.e.*, to reserve 800 numbers for marketing/customer service uses, 888 for paging and personal applications, 877 for fax and data services, etc.

Separation by SAC facilitates caller recall of number, will ease caller confusion as successive SACs are introduced, reduces administrative burdens and the costs of misdialled calls, minimizes opportunities for number brokering, and facilitates special services or features targeted to common applications.

Second, the Commission should grant a first right of refusal to holders of sensitive 800 numbers. This would allow the holder of a sensitive 800 number to have a superior right vis-à-vis all other parties. Instituting a right of first refusal will permit 800 customers to protect their investments in 800 numbers, protect new entrants from being swamped by expensive and resource depleting misdials and support the Commission's goals of efficient use of the number pool. Data collected by the Coalition suggests that only 6% of the total pool of 800 numbers are "sensitive" and need protection in subsequent 8YY SACs. Thus, protecting sensitive 800 numbers will not result in the rapid depletion of toll-free numbers even as it ensures that numbers are devoted to their highest and best use.

The Coalition also urges the Commission to require carriers (LECs and IXC's) to sponsor a market-wide education campaign (using mass media and billing inserts) to educate the calling public about the introduction of 888 toll-free calling, and to take the opportunity presented by the proceeding to modify the Commission's rules and the industry's Responsible Organization guidelines to eliminate number brokering by rewarding "whistleblowers" who uncover brokered numbers a right of first refusal to the number(s) they uncover.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of
Toll Free Service Access Codes

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CC Docket No. 95-155

COMMENTS OF THE 800 USERS COALITION

I. INTRODUCTION

The 800 Users Coalition ("Coalition"), is a group of end users who rely upon 800 service to meet a number of crucial business needs, including ordering, reservation, and sales lines; customer service and technical support centers; and a variety of data-driven financial transaction services. Therefore, the Coalition members are vitally interested in the issues raised by the Commission's Notice of Proposed Rulemaking in this docket.¹

Coalition members include many of the companies who have made toll-free service the highly successful and useful business tool that it is today. Unlike relatively new personal toll-free services, which are frequently just automated forms of old-fashioned collect calling, business services have harnessed toll-free calling services for complex, innovative applications that

¹ *In the Matter of Toll Free Service Access Codes*, CC Docket No. 95-155, Notice of Proposed Rulemaking, FCC 95-419, released Oct. 5, 1995 ("Notice" or "NPRM").

integrate telecommunications and information services. High-volume 800 services are a significant revenue source for local and long-distance carriers. The members of the 800 Users Coalition developed, and invested heavily in, these high-volume 800 services.

Coalition members have been able to use toll-free service to facilitate and expand their businesses in part because they have been able to rely upon the stability and public recognition of certain of their existing 800 number assignments. As detailed in the comments that follow, the central issue in this proceeding for Coalition members is the preservation of those number assignments and thereby the invaluable business tool members have created through their use of toll-free services.

II. COMMENTS

The 800 Users Coalition includes some of the Country's largest companies and banks as well as growing entrepreneurial companies: the Coalition's members include the Ad Hoc Telecommunications Users' Committee which represents an impressive cross-section of the largest users of telecommunications services in the United States;² the California Banker's Clearing House Association which consists of the Bank of America, The Bank of California, City National Bank, First Interstate Bank of California, SANWA Bank California, Union Bank and Wells Fargo Bank; DeraVentures, Inc.; Hyatt Hotels

² Member companies collectively spend in excess of \$1 billion annually on interstate carrier services.

& Resorts; Northwest Airlines, Inc.; Norwest Technical Services, Inc.; Oracle Corporation; QVC, Inc.; Sigma-Aldrich Corporation; the Securities Industries Association which is the securities industry's trade association, representing the business interests of more than 700 securities firms in North America, and collectively accounting for approximately 90 percent of securities firm revenue in the U.S.; 1-800-FLOWERS; and VISA USA, Inc. As prolific users of 800 services, these members have joined forces to respond to the Notice and to urge the Commission to protect the economic viability of toll free access.

To facilitate review, the Coalition's comments generally track the organizational structure and subject matter headings used by the Commission in the Notice of Proposed Rulemaking for this docket.

A. Efficient Use of Toll Free Numbers

The NPRM seeks comment on a number of measures designed to ensure that toll-free numbers are available when subscribers need and want them. NPRM at ¶ 13. The Coalition supports the Commission's efforts to ensure that toll-free numbers are assigned and used efficiently. The Coalition takes no position on the proposals in the Notice concerning affirmative subscriber requests, record-keeping requirements for Responsible Organizations ("Resp Orgs"), and changes to the "lag times" in the Resp Org Guidelines established by the carriers. The Coalition offers the following comments, however, in response to the Notice's questions regarding the use of an escrowed "number deposit" and personal identification number ("PIN") technology.

1. Escrow Requirement

The Notice proposes a one-time deposit into an escrow account for each toll free number held in reserve status. NPRM at ¶ 14. The presumed purpose of the deposit would be to encourage more efficient use of toll-free numbers and to discourage profligate reservations and assignments by parties who warehouse numbers or squander the resource simply to avoid the costs of services and equipment (like PIN technologies) that enable more efficient use. The Notice cites the existence of number brokers and seeks comment on using forfeiture of the deposit to discourage unlawful brokering. NPRM at ¶ 16.

Deposits -- The Notice proposes a one-time deposit of a refundable fee into an escrow account for each toll-free number held in reserved status. The Coalition does not support this proposal because it would not effectively discourage inefficient use and warehousing. A refundable deposit does not penalize inefficient users, carriers entities warehousing numbers since the "loss" of the deposited funds is temporary and the funds are returned with interest. A temporary deposit might discourage inefficient use if it were set at a very high level, but a high deposit would also create a substantial barrier to entry for small businesses -- users, Resp Orgs, or service providers -- who may not be able to afford the total amount required to maintain deposits for their pool of numbers, however temporary the deposit obligation.

The limited potential benefit of a deposit requirement must be weighed against the proposal's burdensome housekeeping requirements. To implement the deposit plan, the Commission would be required to establish the

escrow accounts and rules; monitor the deposit and collection of the deposits; ensure coordination with the database so that deposits are returned in a timely fashion with appropriate interest; calculate interest payments for millions of entities; and otherwise manage the fund to generate interest and minimize fees. The time and resources necessary to protect the integrity of the deposit system outweigh any small benefit that the deposit requirement may produce.

Number Brokering -- The Notice refers to the Resp Org guidelines prohibiting number brokering but does not discuss further the gross inefficiencies and unnecessary costs introduced by number brokers. Number brokers obtain a number assignment valuable to another user and unlawfully seek payment of a fee as a condition of releasing the number to a toll-free customer who would actually use it. In doing so, number brokers deplete the number supply unnecessarily and uneconomically raise the cost of toll-free service.

The Notice appears to suggest that existing rules prohibiting the selling or bartering of numbers by individuals effectively discourage number brokers.³ This is not the case.

The defect in the current guidelines and tariffed provisions is that they do not provide any incentive to *report* number brokers. Pursuant to the NANP Guidelines, if a user of toll-free service seeks a particular number,

³ NPRM at ¶ 16. The Commission and the North American Numbering Plan ("NANP") Guidelines prohibit number brokering and require that a Resp Org strip a broker of a number that it tries to sell or barter. See, e.g., *Industry Guidelines for 800 Number Administration*, § 2.2.1 (June 8, 1995); and NPRM at ¶ 16 and n.41.

discovers the number is assigned to a number broker, and blows the whistle on the broker, the number sought by the user can be stripped from the broker but is returned to the pool of spare 800 numbers. The reporting user has no assurance that it will be able to obtain the number it sought. Indeed, the guidelines do not prevent the number broker from itself obtaining the number again and exposing the whistleblower to the same risk of number “blackmail.” In order to obtain a number assigned to a broker, users have no alternative but to pay the broker’s ransom.

The Coalition urges the Commission to adopt rules for toll-free number assignments that will discourage number brokers and encourage efficient use of brokered numbers. A rule that rewards whistleblowers with the number they seek accomplishes both goals. Under this rule, if it is demonstrated that a broker tried to sell a number, the broker loses the number. The stripped number is then assigned to the whistleblower, creating an incentive for whistleblowers to come forward and ensuring that numbers are available for their most productive and efficient use.

2. Personal Identification Numbers

The Notice requests comment on methods for encouraging the use of PIN technologies, which conserve the supply of assignable toll-free numbers. NPRM at ¶ 21. The Coalition supports the Commission’s efforts to identify mechanisms that would encourage or reward the use of PIN technologies. The Coalition also urges the Commission to require PIN technologies for services characterized by companies that obtain large pools of numbers, which are in turn

used for low calling volume services (e.g., paging and some personal applications).

Much of the surge in demand for 800 numbers that threatened to exhaust the pool of available 800 numbers earlier this year came from personal paging service providers who do not use PIN technologies. Many providers of these services use individual 800 number assignments to differentiate among subscribers for the services, even when usage levels for the individual numbers are extremely low. By relying on “free” 800 numbers to differentiate customers, rather than investing in equipment and network technologies to perform that function, paging and personal toll-free service providers have exported a portion of the cost of providing their service to all other toll-free users, creating harmful externalities for all toll-free services. If paging and personal toll-free service providers were forced to internalize the costs of their service, they would use numbering plan resources more efficiently. The Coalition, therefore, supports Commission rules and policies that would encourage such efficiencies.

The Notice expresses concern regarding the possible competitive impact of *requiring* PIN technology because companies using PIN technology “may be at a competitive disadvantage compared to companies requiring their callers to dial only ten digits.” NPRM at ¶ 21. By definition, however, no competitive concerns would arise if the Commission mandated the use of PIN technologies for all large number/low-volume services -- all service providers would be subject to the same requirement. In developing a workable definition of the low usage that would trigger a PIN requirement, the Coalition urges the

Commission to consider the costs and benefits of such a requirement. The Commission should compare (1) the equipment associated with PIN technologies and the customer base over which paging and personal toll-free service providers would recover such costs with (2) the costs (both direct and indirect) of revamping the public switched network to expand the supply of operational toll-free Service Access Codes ("SACs") if PIN technologies are not used for low-intensity lines.

B. Mechanics of Opening New Toll Free Codes

The Notice requests comment regarding policies and procedures for deploying new toll-free codes that would avoid rapid, unanticipated depletion of scarce numbering resources. NPRM at ¶¶ 22-23. The Coalition takes no position on the Notice's proposed changes in the toll-free reservation and assignment process, but opposes a phased-in introduction of all new toll-free SACs, as discussed below.

1. Phased Introduction of New Toll-Free Service Access Codes

The Notice seeks comment on whether (and how) new toll-free codes should be activated gradually to prevent immediate depletion of the number pool and overload of the SMS database. NPRM at ¶ 24. The Notice apparently assumes that the Bell Operating Companies ("BOCs") (or any successor administrator of the NANP) should be permitted to delay the investment required to make all 8YY codes available simultaneously. The Coalition does not support sequential activation of 8YY toll-free codes for all toll-

free services because it is inconsistent with a superior approach mentioned briefly by the Commission at D.3.c of the Notice, namely the dedication of toll-free SACs to particular toll-free services.

Under this approach, the 800 SAC would continue to be used for the call center, sales, customer service, and technical support applications with which it is identified in the minds of the calling public. Similarly, 800 numbers would continue to be used for product recalls or product information. These services depend upon the availability of widely publicized toll-free numbers for calling by the general public.

Newer toll-free services would use the newer toll-free SACs, *e.g.*, 888 for personal and paging services, 877 for fax and data functions, etc. Existing 800 number assignments for fax, data, personal, and paging services could be grandfathered. New number assignments for these services would rely on the 888 pool. Non-conforming 800 number assignments would eventually migrate through attrition to the toll-free SAC dedicated to that service. As customers retire 800 numbers used for personal, paging, fax or data applications, the retired number would be available for traditional 800 service applications.

The “SAC by service” approach benefits every stakeholder in toll-free numbering issues. New entrants using toll-free services for non-traditional applications would benefit because the “SAC by service” approach facilitates access to their services by making it easier for callers to remember their numbers. The approach would also facilitate the introduction of new and

innovative features and functions targeted to particular services, e.g., billing or advanced routing features that may be useful to traditional 800 customers but not paging companies or their subscribers.

Assigning "SACs by service" would also introduce significant benefits to the calling public. Caller confusion and reluctance to use toll-free services would be reduced since service-specific toll-free SACs would be easier for callers to remember and use.

Incumbent 800 customers would benefit from a "SACs by service" approach because it would eliminate the potentially enormous burden and costs of misdialing by a calling public confused by the proliferation of toll-free SACs. User investments in existing 800 numbers would be protected from unlawful brokering or anti-competitive uses of equivalent numbers because number brokers or competitors seeking an unfair competitive advantage would not be able to use the 888 SAC (or other 8YYs) to replicate 800 numbers in order to mislead the calling public or improperly divert calls intended for the original 800 service subscriber.

The "SACs by service" approach is also consistent with historical NANP practice and policy, which often differentiates services by SACs. For example, under the NANP, traditional toll-free service is delivered using the 800 SAC, pay per call services use the 900 SAC, and PCS using 500.

The Notice questions whether assigning SACs by service is consistent with the Communications Act, citing the Commission's recent decision

in the *Ameritech Overlay Order*⁴ regarding an Ameritech numbering plan to relieve an anticipated shortage of telephone numbers in Illinois. A "SACs by service" approach would not be inconsistent with the Commission's analysis in the *Ameritech Overlay Order*. That Order found that Ameritech's proposed relief plan for dealing with the imminent exhaustion of the 708 NPA violated the Communications Act.⁵ Ameritech's proposed plan involved stripping 708 numbers from wireless providers and assigning numbers only from two other NPAs, one already in use and one newly introduced. The Commission found that this plan discriminated unreasonably against wireless carriers by requiring them, and not wireline carriers, to incur significant costs, delays, and inconveniences associated with conversion of existing services to the new NPA. In addition, the plan would have conferred a significant competitive advantage on Ameritech.

The "SACs by service" approach for toll-free assignments would not impose similar disproportionate burdens on services assigned to different SACs nor would it confer a competitive advantage on any service provider. Unlike Ameritech's plan, the Coalition's proposal does not require any current user of an 800 number to give up that number or incur any of the costs, inconvenience, or dialing disparities cited by the FCC in the *Ameritech Overlay*

⁴ NPRM at ¶ 46, citing *Proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech - Illinois*, Decl. Ruling and Order, 10 FCC Rcd 4596 (1995). (*"Ameritech Overlay Order"*).

⁵ *Ameritech Overlay Order*, 10 FCC Rcd at 4612.

Order.⁶ Instead, existing non-conforming uses would be grandfathered and migration to the new SAC would occur through natural attrition. Second, no one set of users⁷ or carriers would bear *any* costs, much less a disproportionate share of such costs, as a result of the deployment of the 888 SAC. New toll-free users have always been assigned new numbers and old assigned 800 numbers must always be returned to the pool when a customer ceases service. Moreover, the plan would confer no competitive advantage upon any carrier because traditional 800 services that would continue to use 800 numbers do not compete with the new paging and personal toll-free services that would use 888.

Finally, the "SACs by service" approach furthers the statutory and policy goals identified by the Commission for numbering plans:

Goal: Facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications services providers.⁸

Dedicating toll-free SACs to specific toll-free services ensures immediate access to more numbers than sequential release of toll-free numbers. This approach makes a large pool of new 8YY numbers immediately available to new services that require them.

⁶ *Id.* at 4605-08.

⁷ Coalition members use all of the technologies -- fax, data and paging -- affected by the proposal, except those used purely for personal applications. Any end user burdens associated with separation by SAC would be born uniformly by all end users.

⁸ *North American Numbering Plan*, CC Docket No. 92-237, Report and Order, FCC 95-283, at 14-15, released July 13, 1995 ("*NANP Report and Order*"); and *Ameritech Overlay Order*, 10 FCC Rcd at 4604.

Goal: No undue advantage for any particular industry segment or group of consumers or technology.⁹

Separation of services by SAC ensures that traditional toll-free consumers of 800 numbers are not unduly disadvantaged by the proliferation of non-traditional toll-free services and consequent demand for toll-free numbers. New service providers benefit from reduced caller confusion since the calling public will be better able to recall, and thus more comfortable using, a variety of toll-free SACs. Both new services and traditional toll-free services will benefit if their toll-free service costs are reduced by fewer misdialled calls. SAC separation also facilitates special services or features targeted to the services grouped in the same SAC (e.g., advanced routing features for customer service centers; specialized intercept and gateway functions for paging services), while permitting special rules or fees targeted to "problem" applications (e.g., inefficient use of numbers for personal use applications).

Goal: Facilitate easy access by consumers to the public switched telephone network.¹⁰

As noted above, separation by SAC facilitates users recall of numbers and eases caller confusion as successive SACs are introduced. If services are jumbled together, customer confusion, delay, misdials, frustration, and reluctance to use toll-free services is inevitable.

⁹ *Id.*

¹⁰ *NANP Report and Order at 14-15.*

C. Vanity Numbers

Hundreds of 800 numbers may be required by a large user's business. The only numbers of crucial importance, however, are the few that are widely publicized for use in marketing and high volume call center applications.¹¹ Sometimes, the mnemonic equivalent of these numbers have become synonymous with the company (e.g., the use of 1-800-THE-CARD by American Express) or are a tool around which an entire business is built (e.g., 1-800-FLOWERS). In most cases, however, the mnemonic equivalent is irrelevant to its utility for the toll-free customer. Product information numbers printed on widely distributed packaging materials or ordering catalogs, for example, or numbers that carry unusually large traffic volumes (such as 800 reservation numbers for hotels, airlines, and credit card verification) require special protection, not only to preserve the existing assignee's investment in the number but also to protect new entrants from unanticipated calling volumes (for which they must pay) and the calling public from the frustration, delay, and inconvenience of misdialed or misdirected calls. Protecting sensitive numbers is in the best interests of incumbent 800 users, new 888 (or 8YY) entrants, and the calling public trying to understand the new toll-free SACs.

Without protection for the 8YY equivalents of sensitive 800 numbers, a new entrant assigned an 8YY equivalent could quickly become

¹¹ The Notice distinguishes "vanity" numbers from "high volume" numbers, however, holders of both types of numbers face the same issues. Accordingly, the Coalition's comments include both types of numbers in this discussion.

insolvent. One Coalition member's sensitive 800 numbers receive an average of 40 million minutes of calls each year.¹² If the equivalents of that member's 800 numbers are assigned in the 888 SAC to a new entrant, say a small business anticipating 4,000 minutes of toll-free calls per month, the new entrant's toll-free service could be clogged with thousands of misdialed calls per month.

This scenario is not farfetched. American Airlines currently has assigned to it the most commonly misdialed variations of its primary ticket reservation and customer service 800 number. Although misdials to these number variations account for only a fraction of American Airlines' total calling volumes, that translates into nearly 60,000 calls per month, enough to drown most toll-free users if the cost of the calls does not bankrupt them first. The Commission's rules must protect incumbent 800 users and new toll-free service users from inappropriate assignment of 8YY numbers equivalent to sensitive 800 numbers.

1. Scope of Vanity Numbers

Data collected by Coalition members indicates that protection of sensitive numbers will not require significant or inefficient changes in number assignment procedures because the number of sensitive numbers (*i.e.*, vanity numbers and high volume numbers) is likely to be small; indeed, much smaller than the estimate previously reported by the SMS/800 Number Administration

¹² Businesses are not the only users with high volume numbers that need protection. The Government also has such numbers. Pity the poor user who is assigned the 888 equivalent of the IRS tax help line, especially in April.

Committee of the Ordering Billing Forum in the Alliance for Telecommunications Industry Solutions ("SNAC").

Coalition members account for well in excess of 14,000 800 numbers. They represent a broad cross-section of American industry, ranging from airlines to software. Yet of the 800 numbers assigned to coalition members, only 6 % would be classified as "sensitive" by coalition members and deserving of special protection under the FCC's rules. These numbers carry on average 300 million minutes of traffic a year and can generate as much as 4 billion dollars for a company in revenues.

To cross-check the magnitude of the Coalition's reported data, the Coalition examined another source of data regarding the size of the pool of numbers likely to be considered "sensitive" by the number holder, namely, the AT&T 800 Toll-Free Directory. The Commission may reasonably assume that sensitive 800 numbers, which are widely disseminated to encourage calls from the general public, will be included in the AT&T's published 800 Directory. Thus, the Directory is a reasonable gauge of the size of the sensitive number universe and, if anything, will tend to overstate it. The most recent AT&T directory has approximately 180,000 published 800 numbers.¹³ Although the Coalition was unable to obtain similar data for the other 800 service providers who publish directories, AT&T's data nevertheless provide a useful "sanity

¹³ According to AT&T, 120,000 of the published numbers are for business use and 60,000 are for personal use.

check” on the reasonableness of the Coalition’s member-specific data given AT&T’s majority share of the 800 market.¹⁴

These two data sets indicate that the Commission may reasonably assume that the pool of “sensitive” 800 numbers requiring regulatory protection in subsequent 8YY SACs is between 5% and 6%.

Thus, the potential costs of protecting sensitive 800 numbers would be minimal since the universe of sensitive 800 numbers requiring protection is likely to be relatively small. The toll-free number base would likely not be unreasonably diminished if sensitive 800 numbers are protected by replication, because so few numbers need protecting.

Moreover, data collected from Coalition members also shows that protecting sensitive numbers encourages efficient use because sensitive numbers tend to be used quite efficiently. Coalition data demonstrates that sensitive numbers generate high volumes of traffic and revenues. Some members reported that they use their 800 numbers to generate revenues as high as 4 billion dollars per year.

2. Proposals

The Notice identifies, and the Coalition supports, several methods for protecting sensitive 8YY numbers.

¹⁴ The Commission should request this information from the carriers. But even without the information, the Commission can draw certain assumptions. Assuming that AT&T has at least 50% of the market share for 800 numbers, and other carriers provide approximately the same amount of published 800 numbers, the maximum amount of 800 numbers advertized to the public is 360,000 or about 5% of the total 800 number pool.

Separation by Service Function -- As discussed above in Section B.1, the Coalition strongly supports a "SACs by service" approach to protecting existing and future number assignments. In conjunction with the right of first refusal proposed in the Notice and discussed in further detail below, a "SACs by service" approach would be the most effective and efficient method of protecting sensitive numbers and facilitating efficient and consumer friendly use of new toll-free numbers.

Right of First Refusal -- The Notice proposes a right of first refusal as a means of protecting sensitive 800 numbers from the consequences of assigning equivalent 888 numbers. NPRM at ¶ 42. Under this proposal the holder of a sensitive 800 number would have a superior right vis-à-vis all other interested parties to receive the equivalent 8YY number.

The Coalition strongly supports a right of first refusal to ensure that 8YY equivalents of sensitive numbers are assigned to the appropriate 800 customer. Protecting sensitive 800 numbers through a right of first refusal is in the public interest. It benefits existing 800 users, customers, the Commission, and new entrants.

First, instituting a right of first refusal would permit 800 customers to protect their investments in their 800 numbers. 800 customers have spent millions of dollars marketing their numbers and developing customer recognition for their sensitive numbers. If an 800 sensitive number is assigned to a different 888 user customers will be confused and those investments will unfairly be undermined.

Second, the calling public would benefit from a right of first refusal. If sensitive 800 numbers are replicated in the 888 SAC, customer confusion and misdirected calls would be significantly reduced since callers would not be required to accurately recall three additional digits to place a toll-free call. Replication maintains name recognition and therefore accessibility.

Third, a right of first refusal will reduce the efforts and resources that the Commission is required to devote to resolving disputes over number brokering and the assignment of numbers. It would help eliminate number brokering by preventing number brokers from obtaining the 8YY equivalent of a sensitive 800 number for the purpose of attempting to extract a fee from the 800 user. Without a right of first refusal, number brokers can obtain equivalent 8YY numbers and profit from customer confusion and 800 users' goodwill and investments.

Finally, a right of first refusal protects new entrants. As discussed earlier, many sensitive numbers carry enormous levels of traffic. If the user assigned one of these sensitive high volume numbers cannot reserve the 8YY equivalent, a new entrant may be assigned the number. Thousands of misdirected calls would clog the new entrant's lines and make the number unusable.

In short, a right of first refusal furthers the Commission's goals of promoting efficient and effective use of the toll free numbering pool.

The Commission should implement a right of first refusal in conjunction with the delayed assignment of sensitive numbers. Sensitive

numbers would be withheld for assignment in 888 until the pool of non-sensitive numbers is exhausted. If a potential 888 customer requests a sensitive number after those numbers are made available for assignment, the database administrator would notify the 800 number holder who would then either have the 888 number assigned to itself or release the number for use by others.¹⁵

a. Fee Requirements -- The Coalition opposes the suggestion in the Notice that users be required to pay a fee for the exercise of a right of first refusal. NPRM at ¶ 41. Requiring a fee creates two problems. First, it places additional burdens on 800 users. Users who exercise a right of first refusal to protect their investments in working 800 numbers should not be required to pay twice. Second, it would be virtually impossible to establish the proper fee level.

If the Commission nevertheless imposes fees for the exercise of a right of first refusal, it should develop fees that encourage and reward efficient use, while penalizing inefficient use. To achieve this end, the applicability and amount of a fee must be pegged to the 800 customer's use of the number. Thus, the Commission should require a fee only from users whose calling patterns fall below a usage-based threshold of efficiency, and not from users with historically intensive, highly efficient usage patterns. The threshold volume requirement should be based on average monthly usage, annualized to compensate for

¹⁵ By reserving assignment of these numbers for last, the Commission would increase the chance that a number would no longer be considered "sensitive" by the time it is released for assignment. So, for example, if the caller education process greatly reduces the chances of confusion, a 800 holder may elect to release the number.